DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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INQUIRY INTO MATTERS	)	UTILITY DIVISION
CONCERNING INTERCARRIER	)	
COMPENSATION	)	DOCKET NO. D2004.5.84

**COMMENTS OF THE MONTANA CONSUMER COUNSEL
ON THE MISSOULA PLAN**

I. INTRODUCTION.

On September 8, 2006, the Montana Public Service Commission (Commission) issued a notice convening a workshop on intercarrier compensation on November 17, 2006. The notice also requested comments from interested parties and recommendations on comments the Commission might file with the Federal Communications Commission (FCC) on the "Missoula Plan" (Plan). Accordingly, the Montana Consumer Counsel (MCC) submits these comments.

II. SUMMARY OF COMMENTS.

MCC does not support the Missoula Plan because it increases local telephone rates, creates more problems than it solves, threatens state jurisdiction, does not pass along any financial benefits to consumers, and is incomplete. Accordingly, MCC recommends that the Commission not support the proposed Missoula Plan.

III. DISCUSSION.

Intercarrier compensation is the general term given to fees charged by carriers to other carriers. For example, interstate access charges are the intercarrier compensation fees paid by a carrier to use another carrier's local network to complete an interstate toll call. Intercarrier compensation includes not only interstate access charges, but also intrastate access charges and local exchange fees (commonly called local compensation). The Plan is an attempt to combine all these structures into a single charge structure for any type of traffic. The Plan, however, does not even approach a single charge structure as the rates vary by type of carrier and embed much of the disparity in rates that already exists. The primary concern for MCC is that every one of these compensation plans has one goal, and that is to transfer the cost responsibility of the local network, which is used by and designed for all services, to the basic local exchange consumer. In other words, the Plan increases the price a consumer has to pay to have access to the basic telephone network. This results in two significant problems. First, it adversely affects the provision of universal affordable basic service to consumers, which has been part of the Telecommunications Act since 1934. And second, the Missoula Plan, like all the plans before it, ignores cost responsibility.

A. Local consumers' rates increase under the Missoula Plan.

The major impact of the Missoula Plan is significant increases in the price consumers pay for basic local service in Montana. The Plan is a significant step backwards in cost-based compensation for access. The Plan increases the subsidy going to toll carriers for plant that was designed for toll usage. Under the Plan, the subscriber line charge cap moves from $6.50 to $10.00 plus inflation (Plan, p. 17). This ignores the fundamental use and design of the plant for toll usage. As the country moves toward fiber-to-the-home for broadband connections, the users that just want plain old telephone service are being not only ignored, but also forced to pay costs for a system they do not want or use.

These increased basic local exchange rates come from two sources. First, the Plan shifts costs of the loop to the local consumer. The subscriber line charge increases to $10 per month. This is an additional $3.50 per month and potential for more as the Plan provides for future increases tied to inflation, even if actual telephone line costs go down. It has been estimated that nationwide, the average residential local service rate will increase from $24.75 to $28.75, a 16.2 percent increase in local rates before the impact of higher contributions to the universal service fund (USF).[1] Second, the Plan increases the subsidy from Montana local exchange consumers to fund the additional USF payments caused by the Plan. This is an additional $2.225 billion (Plan, p. 60).[2] Currently each Montana consumer contributes about $38 per year to the fund. The Plan increases contributions to about $50 a year. The Plan increases the Montana urban consumers' support to rural telephone companies, whether the rural companies need the increase or not.

B. The Missoula Plan does not solve problems - it creates new ones.

The Plan's main goal is to eliminate disparity in intercarrier rates. The Plan fails to do this -- it simply creates new disparities. As shown on Chart 1, the National Regulatory Research Institute has shown that there is disparity in intercarrier compensation rates. The proponents of changes in intercarrier compensation for access use this disparity to justify significant changes in intercarrier rates that always result in local consumers paying more for basic service. This argument ignores that fact that most of the disparity in carrier compensation rates is cost based, *i.e.*, there is a reason for the disparity. The same carriers that draw most of the money from the universal service fund, rural carriers, cause most of that disparity. There are rural carriers that need to charge more for access because their facilities cost more, and keeping higher access charges is the way to do it.

The Missoula Plan does not eliminate those disparities -- it embeds them. Under the Plan, carriers are classified according to how many lines the company serves, and placed in either Track 1, 2 or 3. The large urban carriers like Qwest are in Track 1. The large rural carriers are in Track 2. The smaller rural carriers are in Track 3.[3] Disparity may be somewhat reduced, but remains largely unchanged. As shown on Chart 2, little changes -- the rural carriers in Track 3 continue to charge vastly different rates. Also it is quite clear from this chart that the disparity in Track 1 and 2 carriers is not that significant, and is easily explained once costs are examined. The larger Track 1 and 2

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[1] Estimate by West Virginia Consumer Advocate Billy Jack Gregg in "Analysis of Deficiencies of Missoula Plan."
[2] The page citations to the Plan are to the Adobe electronic version.
[3] For a complete description, see page 11 of the Plan (page 1 of the Executive Summary).

carriers operate in different areas of the country with different costs of construction and maintenance.

The disparities and the Plan's termination of existing interconnection agreements and contracts create additional problems for carriers, including Track 1 carriers like Qwest. For example, Qwest's existing agreements and contracts with other carriers would no long matter, and carriers would pay the lower Plan rates rather than the higher rates contained in agreements. This may cause Qwest to increase its local rates to consumers to make up the revenue, creating additional pressure on Qwest's consumer rates. The Plan itself increases consumer rates first, by moving additional access costs to local exchange and second, by increasing subsidies from the USF.

C. The Plan threatens state jurisdiction.

The Plan pays lip service to a state's right to establish its own intrastate access rules, but there really is no discretion. In fact, the Plan has an entire section on legal justification for preemption of this Commission's right to regulate the carriers that operate in Montana. This legal section sets out why the creators of the Plan believe that the FCC has the authority to preempt a state's jurisdiction. Under the Plan, a state no longer has jurisdiction over Track 1 and 2 carriers' terminating access rates. In addition, if these carriers do not like the state's decision on Track 1 or 2 originating access, or Track 3 originating or terminating access, they can go to the FCC to preempt state jurisdiction. This is another attempt to shift local carrier regulation away from local control to federal control.

D. Reductions in the cost of access will not be passed on to consumers.

The Plan's intercarrier compensation rates will reduce carriers' costs by $6.9 billion. Recent smaller decreases in intercarrier compensation rates have resulted in no reduction in local exchange rates. In addition, since l998, the large Track 1 and 2 carriers have been successful in reducing their property taxes by about one billion dollars a year across the nation, including Montana. That represents about a 25 percent decrease in the property taxes paid to the states or counties. Property taxes are included in each of the telephone company's rates charged to consumers for local telephone service. Whether the telephone company is under rate of return regulation or some other form of alternative regulation, such as price caps or inflation adjusted rates, the rates to consumers include the higher level of property taxes. Yet over this period there has been no decline in the rates consumers paid for local exchange service. Consumers are paying one billion dollars more than they should, based on the actual cost of service, all other things being equal.

The Plan results in a $6.9 billion decline in cost that is also likely to not get passed on to consumers, while increasing local exchange rates as described above. The existing higher intercarrier compensation rates are reflected in the rates these carriers charge consumers. Yet there are no requirements in the Plan for carriers to pass on these cost reductions to consumers. Of course, in order to sell the Plan, its supporters simply assume that the decline will be passed on to consumers in order to show smaller impacts on consumers. This assumption is nonsense, and is based on the false premise that the toll and local markets are workably competitive. These markets are not competitive. The market has transformed through mergers and acquisitions into an oligopoly with very limited competition. The Commission is well aware of the fights, even when both MCI and AT&T were alive as toll carriers, to have any reduction in access charges passed on the consumers.

E. The Plan is not complete.

The creators of the Plan downplay the fact that there would need to be significant changes in the law and FCC precedent to include all carriers under the plan, as they assume, for the Plan to work. For example, under the Plan, VOIP, which must access the public switched network, only recently was ordered by the FCC to pay into the USF. The FCC order is likely never to be implemented in a manner that requires VOIP providers to make USF payments equivalent to the payments made by wireline consumers.[4] Many VOIP users will continue to pay nothing unless the laws are changed. This provides an additional incentive for more consumers to switch to the VOIP service, even with its lower quality and reliability. This will cause additional erosion of access charges and USF support.

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[4] Wireless and VOIP providers are under a percentage-based system that is applied only to major suppliers of service.

The Plan calls for the FCC to “adopt assertive new legal strategies to implement” the provisions like uniform intercarrier compensation rates. Are these new rates to be uniform based on costs and if so, whose idea of costs? In addition, the massive difference in mandated local exchange calling areas for wireless carriers created by the FCC is not addressed. A wireless call that both originates and terminates in a Major Trading Area for a cellular carrier is a local call, whereas local calling areas for the wireline companies like Qwest are much smaller. Unless the Plan addresses this disparity, the Plan leaves the wireline carriers at a disadvantage. Further, where do cellular and VOIP carriers fit into the track system, and will these carriers start to provide real traffic data? The Plan does not answer these questions and assumes that carriers in various tracks have the same costs. There is no analysis of the costs of providing service for any of the carriers in any of the tracks. The Missoula Plan simply does not comply with the Telecommunications Act, which uses and requires cost based rates.

IV. CONCLUSION.

For the foregoing reasons, the Commission should not support the Missoula Plan in its comments to the FCC.

Respectfully submitted November 13, 2006.

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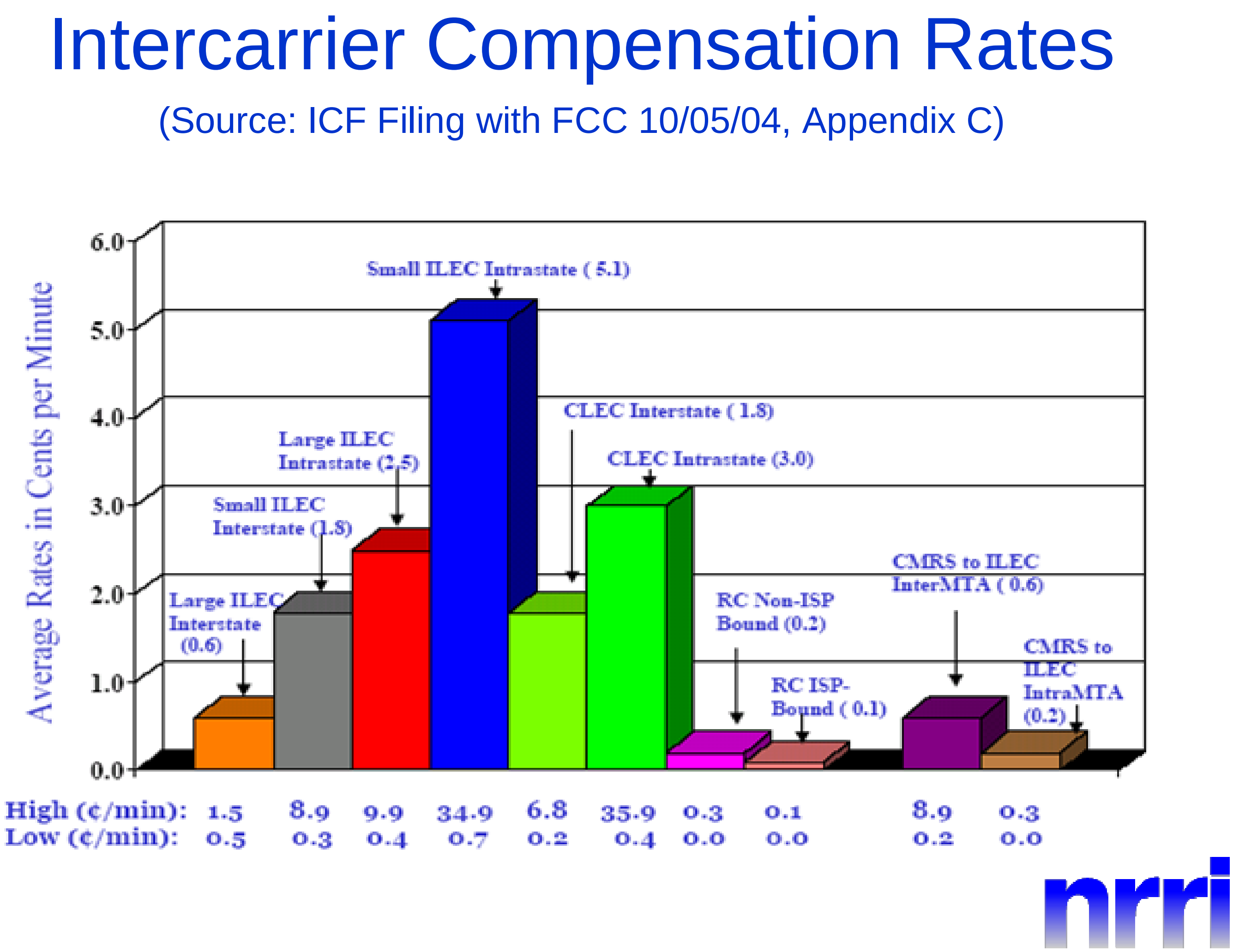
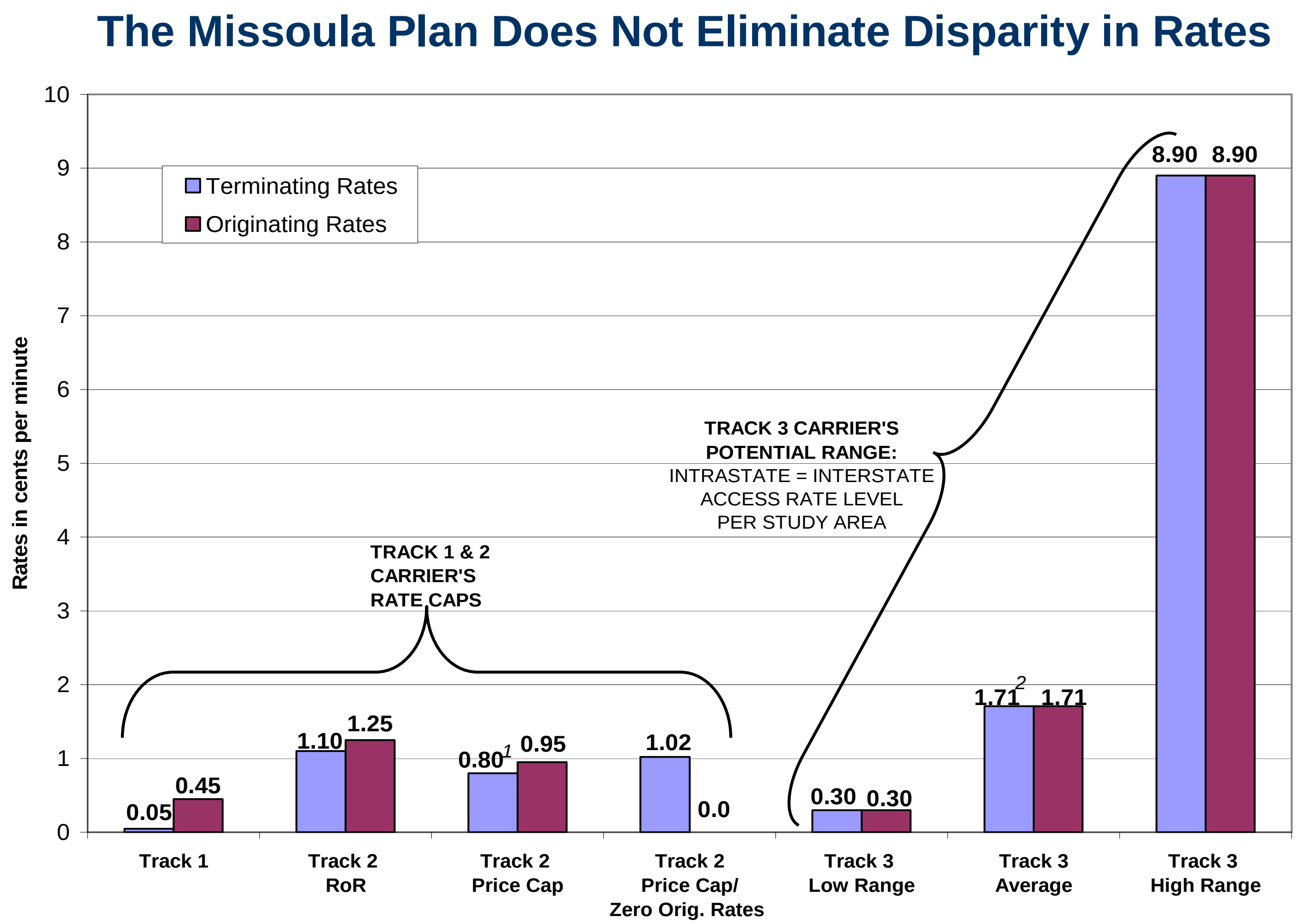
Chart 1



Source: Presentation by Ed Rosenberg, Ph.D. at the Michigan State University, Institute of Public Utilities' CAMP NARUC 2006 - August 14, 2006

Chart 2



1. Assumes end office switching rate of 0.05¢ and 0.75¢ for common transport and tandem switching.
2. Compensation for EAS traffic remains under existing arrangements. Reciprocal compensation rates for 251(b)(5) traffic capped at interstate access rate levels.

Source: Presentation by Billy Jack Gregg, The Missoula Plan: Bad for Customers, Bad for Competition, Bad for The Market, September 25, 2006.